HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.617 OF 2000

Sanjay Jaywant Kamble
res. at Shashtri Nagar,
Tal: Alibag,
Dist: Raigad ..Appellant
(Original Accused)

Versus

1. The State of Maharashtra
   At the instance of
   Inspector of Police,
   Alibag Police Station.

2. Savita S. Late,
   R/o. Alibag Koliwada,
   Shashtri Nagar,
   Tal: Alibag,
   Dist: Raigad. ..Respondent
   (Original Respondent)

Mr.A.P.Mundargi i/b.Ganesh Gole for the appellant

Smt.Usha V. Kejriwal, Addl.P.P. for the State.

Mr.Vijay Gharat for the respondent no.2.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 9th JUNE, 2005

JUDGMENT (Per S.B.Mhase,J.).

1. Relying upon the testimony of P.W.1 and P.W.2, eye witnesses and relying on oral dying declaration deposed to by the P.W.2, coroborrated by the testimony of the P.W.4, panch in respect of the discovery of incriminating weapon and T Shirt, and P.W.5 Jitendra

who has seized the clothes of the deceased, the IIIrd Additional Sessions Judge, Raigad, by its Judgment & Order dated 22nd July, 2000 in Sessions Case No.188 of 1998 convicted the Appellant accused under Section 302 of the I.P.C. and sentenced to suffer R.I. for life and to pay fine of Rs.10,000/- i.d. further to suffer R.I. for two years. The amount of fine, if recovered, was directed to be paid to the Respondent No.2 Savita who is the wife of the deceased. The said Judgment and Order of the IIIrd Additional Sessions Judge, Raigad is under challenge in this Appeal.

2. The incident has taken place on 10th August, 1998 at about 9.30 p.m. opposite to Liquor Den belonging to Shankar Bhagat, situated at Alibag. On the day of the incident there was community meeting at Lamani Hall wherein the P.W.1 and 2 alongwith the deceased were present. Apart from that some 70 to 75 persons were actually present in the said meeting. In the said meeting the panchas of the community have carried out the usual collection and the practice was that out of that collection the loan is to be distributed to the needy persons from the community. After collection of the amount the deceased insisted that the amount of loan to be advanced to P.W.2 Bapu Pandurang Agravkar. However, the accused who was the accountant objected to advancing loan to P.W.2. on the ground that the earlier loan which is advanced to

P.W.2. Bapu Agravkar is in arrears. As a result of this there were counter claims and hot exchange of words between the deceased and the accused and other members. However, the other members who were present in the meeting rescued the quarrel between them and thereafter the meeting dispersed.

3. After the meeting, the P.W.1 and 2 alongwith the deceased visited the Liquor Den of Shankar Bhagat. While they were consuming liquor the accused came to the said liquor den and called the deceased saying that he had some work with him. The deceased and the accused went out of the liquor den and there was hot exchange of words between them. P.W.1. (Kishore) and P.W.2. (Bapu) came out because of the hue and cry of the quarrel between the deceased and the accused. At that time they found that the accused took out a knife from his back pocket and inflicted injuries on stomach, chest and below the neck. Shankar Bhagat also came there. He snatched the knife from the hands of the accused. However, the accused again snatched it from Shankar Bhagat and ran away. Thereafter, P.W.1 and P.W.2 gave support to the deceased and went to his house which is situated at a distance of 15 to 20 ft. P.W.3 (Dattatraya) is the brother of the deceased. The deceased disclosed to Dattatraya that the accused has inflicted the injuries. Thereafter, P.W.3 and P.W.1 alongwith the deceased have gone to the police station

and on getting police yadi, the deceased was admitted in the Civil Hospital, Alibag. Thereafter P..1 lodged his First Information Report with the police. At about 3.00 a.m. on 11th August, 1998, the deceased succumbed to the injuries inflicted on him as stated above.

4. Initially the offence was registered under Section 307 of the I.P.C. However, after the death it was converted to Section 302 I.P.C. The inquest panchanama was prepared at the Civil Hospital and after the autopsy the dead body was handed over to the relatives of the deceased. At that time the clothes of the deceased were seized under panchanama Exhibits 23, 24 and 25. Whereas when the accused was in the custody, the incriminating knife and T Shirt of the accused were discovered on the statement made at the instance of the accused. Thereafter accused was chargesheeted.

5. The learned Counsel, Mr. Mundargi, appearing on behalf of the accused submitted that on the day of the incident there was heavy rain and the incident had taken place at about 9.30 p.m. infront of the house of Shankar Bhagat where there was no electric light available, and therefore, as there was no sufficient light to identify the assailants it is a case of mistaken identity. The learned Counsel who appears for the State supported the judgment of the trial Court and

submitted that the prosecution has proved the case beyond reasonable doubt.

6. The death of the deceased Sadanand was homicidal death and the said finding is not under challenge by the Appellant and apart from that there is evidence on record, namely, Post Mortem Notes-Exhibit 29 and the deposition of Dr. Palkar who had carried out the autopsy on the body of deceased-Sadanand. It is reflected from his evidence that there were three injuries on the body of Sadanand and those were on chest, stomach and below neck. The doctor has given opinion that because of these injuries death was caused. The knife was shown to the doctor and the doctor has deposed that the death was possible by the injuries due to knife and therefore it is proved that the death of deceased Sadanand was homicidal.

7. The next question is as to who has caused the death of Sadanand. The facts that the accused was the community accountant and that on that day there was a meeting of the community and during the meeting they collected their regular contributions so as to advance loans to the needy persons of the community are not in dispute. It is equally not in dispute that in the said meeting the deceased insisted that the loan should be given to P.W.2, Bapu Agravkar and that the accused opposed to advance loan to P.W.2, Bapu Agravkar on the

ground that the earlier loan was not paid by the said Bapu Agravkar. It is equally not in dispute that in the said meeting there was hot exchange of words and there was dispute between the deceased and the accused and that the other community persons rescued them.

8. From the testimony of P.W.1 and P.W.2 it is very clear that after the said meeting, P.W.1. Kishore and P.W.2. Bapu Agravkar have gone to the liquor den of Shankar Bhagat and they have ordered for a bottle of liquor. They were to take the liquor, at that point of time the accused came to the liquor den and called the deceased saying that the accused was having some work with the deceased. In view of the said call the deceased went outside the liquor den and the quarrel again started between them, and because of that the P.W.1 and P.W.2 came out of the liquor den. They saw that the deceased and the accused were quarrelling and they further saw that the accused took out a knife from the backside pocket and inflicted the injuries by the said knife on the deceased Sadanand on his stomach, chest and neck. They stated that they could not immediately intervene because they were afraid. Both of them categorically stated that after the blows were given, Shri Shankar Bhagat snatched the knife from the hands of the accused, but the accused again snatched the knife and ran away. Both of them have further stated that they gave support to the deceased and have

taken the deceased to his house which was/is close by, wherein P.W.3 Dattatraya was available. Dattatraya being brother of deceased had arranged to take the deceased to the police station and at that time deceased disclosed to Dattatraya that it was the accused who had inflicted the injuries on him and thereafter the P.W.1 and P.W.3 have taken the deceased to the police station and from the police station to the Civil Hospital. The testimony of P.W.1, P.W.2 and P.W.3 on this aspect is quite consistent and reliable. Even from the cross examination of these witnesses nothing has transpired which may lead us to disbelieve them or to raise doubt in our mind in respect of their truthfullness. It is further to be noted that the disclosure by the deceased to his brother Dattatraya immediately that the accused had inflicted the injuries is the natural conduct of the deceased. Thus, what we find is that the ocular evidence and the oral dying declaration both are substantive piece of evidence as against the accused, which evidence is consistent with the prosecution story.

9. There is further corroborative evidence available on record. The clothes of the deceased were seized under panchanama Exhibits 23, 24 and 25. All these panchanamas have been proved by the P.W.5 Jitendra. Nothing has transpired in the testimony of this witness so as to disbelieve or doubt him. The

P.W.4 has proved the memorandum statement Exhibit 20 and his discovery panchanama Exhibit 21. As a result of the statement made by the accused, a knife- Article 9 and T Shirt- Article 10 were discovered as stated in the said panchanama. So far as this discovery aspect is concerned it is also doubt free evidence which is against the accused. And even before us, there is no challenge by the learned Counsel to the said discovery. All these articles, namely, knife Article No.9 and T Shirt Article 10 coupled with the clothes of the deceased were sent to the Chemical Analyser and it is transpired that there was human blood of "O" Group on these articles. The blood group of the deceased was also "O" and the blood of the said group was found on the T Shirt which was recovered at the instance of the accused and on the knife used in the crime. Apart from that there was no injury on the person of the accused. Taking all these circumstances together, it conclusively proves that the dagger in question i.e. Article 9 was used at the time of commission of the offence, as alleged by the prosecution and the Shirt which has been recovered at the instance of the accused was also on his person. Thus, from this evidence we find that the prosecution has established the case beyond reasonable doubt.

10. Now, coming to the submission of the learned Counsel, the learned Counsel has pointed out the

omissions from para 11 of evidence of P.W.1 which reads as follows:

> " I have stated before the police, we saw the incident in the light of bulb hanging in the porch of Datta Hakwar. In my supplementary statement also I have stated so before the police. I cannot say why it is not in my statement as well as in the F.I.R."

He further pointed out from para 13 as follows:

> It is not true that I have deposed falsely that the accused called the deceased out of the den and that they had quarrel. It is not true that I have deposed falsely that I had seen the accused assaulting the deceased with knife."

From para 14 he pointed out as folllows:

> "The house of Shankar is at the distance of about 10/15 minutes walk from the place of the liquor den. We had not gone to the Residential house of Shankar Bhagat to consume liquor. I say that the premises where he does the business is his house. No incident had taken place at the residential house of Shankar Bhagat."

Pointing out these portions from the evidence it is submitted that scene of the offence has been shifted from the house of Shankar Bhagat to that of the liquor Den so that the light should be available to see the incident. And thus it is submitted that the incident has taken place at the house of Shankar Bhagat where light is not available and therefore there is an improvement made by the prosecution in their story and therefore it is the case of mistaken identity and equally a case of concoction against the accused. With great respect to the learned Counsel we are not in agreement with this. We reject the said submission. It is to be noted that the witness has cleared that by the house of Shankar Bhagat he meant liquor Den and at that place the liquor business is carried out and thus the witness has explained that place of offence. Apart from that we find that the parties were known to each other. They were from the same community and therefore it is not difficult for them to identify the accused, even though there is to some extent less light to identify each other. Apart from that it is the case of the prosecution that when the accused called the deceased and accused came in the liquor den and/or house of Shri Shankar Bhagat and accused stated that he had some work with the deceased and therefore he and the deceased had gone out. It is nobody’s case that in the house there was no light. If the deceased had gone

in the company of the accused outside the house, which is seen by the P.W.1 and 2 and lateron they have seen the incident outside in the darkness, yet it cannot be the case of mistaken identity. What we find is that the submissions made by the learned Counsel that there is a case of mistaken identity is without any merit and we reject the same. Except this no other arguments were advanced before us.

11. We find that the appeal is without any merit. Hence the Judgment and Order dated 22.7.2000 passed by the IIIrd Addl. Sessions Judge, Alibag, Raigad in Sessions Case No. 188 of 1998 is hereby confirmed. The Appeal is dismissed.

(S.R.SATHE, J.) (S.B.MHASE, J.)